IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ram Prakash & Ors. v. Board of Revenue & Ors.

S.B.CIVIL WRIT PETITION NO.371/2000
under Articles 226 and 227 of the Constitution of India.

Date of Order : 23rd November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Joshi, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. N.S.Acharya, for the respondents.

BY THE COURT :

By this petition for writ a challenge is given to the judgment dated 3.12.1999 passed by Board of Revenue for Rajasthan, Ajmer in reference Nos.102/96 and 103/96.

At the threshold it is contended by Shri Nidhi Shankar Acharya appearing on behalf of private respondents that the validity of judgment impugned dated 3.12.1999 has already been affirmed by this Court by judgment dated 20.4.2004 in SBCWP No.387/02,

State of Rajasthan & Anr. v. Board of Revenue & Ors. A photocopy of the judgment is supplied to the Court which is taken on record. By the judgment dated 20.4.2004 this Court held that the impugned order dated 3.12.1999 passed by learned Board of Revenue cannot be said to have been suffered from the basic infirmity and illegality and the same does not require any interference by this Court under Article 226/227 of the Constitution of India. The writ petition was dismissed by the Court accordingly.

It is contended by counsel for the petitioners that the judgment dated 20.4.2004 cannot be taken into consideration being per incurium. According to counsel for the petitioners the Board of Revenue by the judgment dated 3.12.1999 held that the Collector was not competent for making a reference under Section 82 of the Rajasthan Land Revenue Act as the Collector is competent to make reference with regard to the orders and decisions taken by the officers subordinate to him but in the present case reference was made with regard to a decision of the Collector taken under policy decision of Government of Rajasthan. This Court by judgment dated 20.4.2004 disagreed with the finding given by Board of Revenue but for the reasons which were not relevant to adjudication, dismissed the writ petition.

I have considered the contention above.

It is true that this Court by judgment dated 20.4.2004 did not agree with the decision of Board of Revenue with regard to maintainability of the reference, however, at the same time the Court also found that the order was not suffering from any infirmity or illegality warranting interference of this Court under Articles 226 and 227 of the Constitution of India. The judgment dated 20.4.2004 is not at all in ignorance of the provisions of law or in ignorance of the judgment of any higher Court, therefore, it cannot be termed as a judgment per incurium. In present writ petition the judgment impugned is the same against which this Court by judgment dated 20.4.2004 dismissed the writ petition by refusing to interfere under Articles 226 and 227 of the Constitution of India. Being a judgment of coordinate Bench I am abide by that.

Accordingly the present writ petition is dismissed in light of the judgment dated 20.4.2004 passed by this Court in SBCWP No.387/02, State of Rajasthan & Anr. v. Board of Revenue & Ors.

(GOVIND MATHUR),J.

kkm/ps.